

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <div style="text-align: center;">9000.2</div>	
<div style="text-align: center; margin-bottom: 10px;"> Certificate of Electronic Transmission <u>Under 37 C.F.R. §1.8</u> </div> <p>I hereby certify that this correspondence and any document referenced herein are being electronically filed with the USPTO via EFS-Web on May 13, 2009.</p> <div style="text-align: center; margin-bottom: 10px;"> <u>Nancy Joyce Simmons</u> (Printed Name of Person Sending Correspondence) </div> <div style="text-align: center;"> <u>/nancy joyce simmons/</u> (Signature) </div>	Application Number <div style="text-align: center;">10/055,629</div>	Filed <div style="text-align: center;">January 23, 2002</div>	
	First Named Inventor <div style="text-align: center;">Leo Lorenzetti</div>		
	Art Unit <div style="text-align: center;">2621</div>	Examiner <div style="text-align: center;">Y. Young Lee</div>	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>35,277</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; text-align: center;"> <p><u>/Stuart H. Mayer/</u> Signature</p> <hr/> <p><u>Stuart H. Mayer</u> Typed or printed name</p> <hr/> <p><u>908.518.7700</u> Telephone number</p> <hr/> <p><u>May 13, 2009</u> Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

Status of Claims

Claims 41-52 are pending in this application. Claims 41, 46 and 50 are the independent claims.

The Rejection in View of Gammenthaler is Clearly Erroneous

Claims 41-52 stand rejected under 35 U.S.C. 102(e) as being anticipated by Gammenthaler (US 2004/0201765). It is respectfully submitted that this rejection is clearly erroneous.

In the Final Action dated 2/13/09 the Examiner appears to be taking the position that the system generator 54 shown in FIG. 1 of Gammenthaler generates the delay on the real time live video stream. More particularly, the Examiner points to paragraph 37 of Gammenthaler as showing the step of *processing the real time live video stream by imposing a surveillance system generated delay of a pre-set time interval on the live video stream to generate a time-delayed video stream*, as required by independent claim 41.

Gammenthaler states in paragraph 37 that the system controller 54 monitors the door 53 to the tape recorder 52 that records the video data. Gammenthaler further states that

The system controller 54 monitors this microswitch either by polling it or through an interrupt generated by circuitry connected to the microswitch or by polling a flag or register bit which is set when the door is opened. When the door 53 has been opened, an unencrypted A1 encryption key (described below) stored in the system controller 54 is erased and the anti-tamper circuit will thereafter be incapable of encrypting any data. As discussed below, other constraints may also be imposed when the A1 key has been erased which are part of an anti-tamper protocol the varieties of which will be described below.

This portion of the reference thus states that when the door is opened, the data will no longer be encrypted. Notably, however, it does not state that the recording process is terminated or delayed. Only the encryption process is terminated. This portion of the references also states that other constraints may be imposed when the A1 key has been erased. These constraints

appear to be discussed in paragraph 73 of Gammenthaler. This paragraph discusses the step 212 that is performed if the A1 key is no longer present, which results in the execution of tamper-proofing protocol. According to Gammenthaler, there are four possibilities for this protocol.

The possibilities for this protocol are: (1) stop encrypting the digital signatures but continue recording and enter a notation in the recorded data at the point the A1 key disappeared that any recorded data from that point forward is to be viewed with suspicion as it may have been tampered with; (2) start encrypting the digital signatures with the C1 key and make a notation of the change such that all recorded data from that point forward should be viewed with suspicion; (3) stop encrypting digital signatures and block all further recording; or (4) any other suitable anti-tampering protocol.

The first and second possibilities clearly do not impose any type of delay since recording of the video data is not stopped or otherwise interrupted. The fourth possibility is a catch-all that is without any specificity. Only the third option, in which all further recording is blocked, may arguably be deemed a type of delay. However, a delay in recording implies that recording will be resumed at some point (The American Heritage Dictionary, 4th edition, defines “delay” as “To postpone to a later time”). In Gammenthaler, the recording is terminated and thus does not constitute a delay.

Furthermore, claim 41 requires that the imposition of the delay causes the system *to generate a time-delayed video stream*. When recording is terminated in Gammenthaler, no such time-delayed video stream is generated. Accordingly, since there is no time-delayed video stream Gammenthaler also fails to show the step of *activating the recording device... to record the time-delayed video stream*, as required by claim 1.

Finally, even if Gammenthaler could somehow be construed as showing the imposition of a delay to generate and record a time-delayed video stream, the delay is not a *delay of a pre-set time interval*, as also required by claim 41. Rather, the duration of the delay in Gammenthaler is indeterminant since it is unknown how long the door to the tape recorder will be open.

Reconsideration and withdrawal of the Examiner’s rejection of independent claim 41 and the claims that depend therefrom are respectfully requested. Independent claims 46 and 50, as

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well as the claims that depend therefrom, are believed to be patentable for at least the same reasons presented above in connection with claim 41.